Opening Statement of the Honorable Jared Polis of Colorado

Before the Subcommittee on Health, Employment, Labor, and Pensions
U.S. House of Representatives

H.J. Res. 29, Providing for Congressional Disapproval under Chapter 8 of Title 5, United States Code, of the Rule Submitted by the National Labor Relations Board Relating to Representation Case Procedures

March 4, 2015

Today we are holding yet another hearing that shows the backwards priorities of the Majority. The Republicans are using an exceedingly rare legislative tool called the Congressional Review Act to reverse a common-sense reform of the National Labor Relations Board's election process. Again and again the majority has attacked the work of the NLRB holding more than 15 hearings and mark-ups on the Board since they took control.

The Board is charged with protecting workers' fundamental right to band together and exercise their voice in the workplace. Through the Board's election process, workers can select representatives to bargain for better wages and working conditions. But, under the current rules, some unscrupulous employers can undermine these rights by using frivolous litigation to endlessly delay union elections.

Last year, for example, more than 1 in 10 election cases were still unresolved after 100 days. And there are many examples of elections dragging out for more than a year. As an example, at a Mercedes Benz dealership in California, the workers filed a petition for a union, and the employer stalled at every opportunity—requesting and receiving an extension for the hearing, requesting and receiving an extension for filing the brief, and appealing the decision to the Board. Even after the election, the employer continued to stall; this entire process ended up taking 428 days. With the new rule, this process could have been shortened to 141 days, which is hardly an ambush and much preferable to a process that lasts for more than a year.

Why is delaying elections so bad, you may ask? There is a direct and causal relationship between the length of time it takes to hold an election and illegal employer conduct. In other words, bad actors stall the election process so they have more time to illegally interrogate, threaten, manipulate, and sometimes even fire their employees to coerce them into voting against the union. Ms. Brenda Crawford, a witness here today, will share her story of exactly this experience, which is sadly all too familiar.

There are also plenty of employers who stall elections in order to engage in <u>legal</u> coercion under the guise of "education." They hold frequent mandatory, captive-audience meetings in order to offer their dire predictions for a unionized workplace. Some employers, like Ms. Crawford's, even send anti-union text messages and emails. Unions have no similar access to employees. Right now, organizers only have access to employees' home addresses, while employers have unfettered access.

Many great employers allow their employees to engage in fair elections, free from threats or unlawful coercion. This rule will do little, if anything, to affect those elections. However for those bad actors out there, this rule is absolutely necessary.

We have a responsibility to protect worker's rights, and provide a level playing field for all parties involved. This modest, common-sense reform goes a long way in doing exactly that. It will standardize practices that are already common throughout many parts of the country. It seeks to allow workers to make their own decisions without manipulation, threats, or intimidation.

Opponents of the rule have tried to characterize the rule as allowing elections on an extremely tight timeline, but the timeline these opponents have put forth is virtually impossible under these rules. Moreover, in essentially every case, the employer is fully aware that organizing is occurring long before the petition is filed. To state that employers will be blindsided and have only a few days to "make their case" is, at the very least, stretching the truth.

Additionally, this Rule in no way abridges employers' free speech rights. Employers will continue to have the ability to subject their workers to mandatory captive audience meetings in the workplace and a barrage of emails and messages as they have access to their contact information.

One noteworthy element of using a Congressional Review Act challenge is that, if it were to pass and be signed by the President, it would forever prohibit the NLRB from enacting a substantially similar rule. So that means that simple modernizations that we can all agree upon—such as allowing parties to file election documents electronically, as this rule does—will be off the table.

Critics of this Rule do not want a level playing field, instead preferring a process that is open to delay and manipulation. Rather than letting workers choose for themselves, bad actors would prefer to delay or prevent the choice from ever being made at all. This Rule reduces the opportunity for bad actors to play games with the process.

Instead of wasting a time on a hearing on legislation intending to hobble an agency dedicated to protecting workers' rights, we should be working together to find solutions that help Americans, their families, and our economy thrive.

Finally, I would like to submit for the record a statement from the United Steel Workers International Union opposing this use of the Congressional Review Act and the Statement of Administrative Policy on S.J. Res 8.

Thank you and I look forward to hearing from the witnesses today.